



STATE OF ARKANSAS
**Department of Finance
and Administration**

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July 20, 2009

Shelby D. Johnson
Geographic Information Coordinator
Arkansas Geographic Information Office
One Capitol Mall 3B201
Little Rock, Arkansas 72201

RE: Opinion No. 20090418S – Clarifications on Opinion No. 20090418

Dear Mr. Johnson:

I am writing in response to your request for an opinion to clarify the taxability of certain services not directly addressed in Opinion No. 20090418. Specifically, you have inquired about the taxability of imagery from a satellite acquired for use. You describe the functioning as:

The sensors on the satellites are always running and they download the data each day when they pass over. The data goes into an archive and then it is processed once an[] order is placed. They pull the data from the archive and ortho-rectify to produce the result.

We use both GeoEye and Digital Globe in 2008 to capture damage from tornadoes. These were photo like products. But they also have near Infrared band on the sensor [that] produces color infrared images.

Finally there are other low resolution satellites like SPOT that produce 10 meter resolution multi-spectral imagery . . . the end result is a photo like image of low resolution.

RESPONSE

As previously explained in Opinion No. 20090418, photography, including digital photography, is a taxable service. The use of photosensitive and heat sensitive arrays to produce the image does not alter the nature of the service from photographic in the view of the Department. As described in your correspondence, however, you are not paying the imaging companies to take these images, but rather are paying for access to the images and data that has already been acquired by the imagery companies.

This sort of image purchasing, where the pictures or images were already taken without an order from you and were catalogued and stored, is not within the understanding of "photography sources" in the rules. In short, these sorts of acquisitions of existing data from satellites, despite

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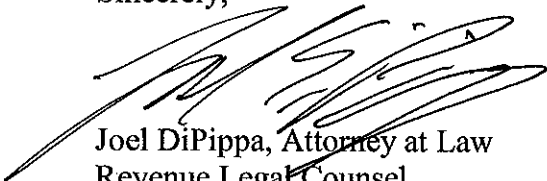
being photographic in nature, are not payments for photography services and are not subject to tax.

There are two caveats to this exemption, however. First, if the imagery purchased is provided in hard copy, rather than as a digital file, the hard copy is tangible personal property that is being purchased and is therefore subject to tax. Second, if you retain a satellite imaging service to record imagery and process it that is not already in their catalogue, you would be paying for a photography service – the acquisition and production of visual imagery recorded by mechanical or digital action. In this instance, the photography service would be subject to tax. The subsequent manipulation of the data the orthorectifying of the image would not be within the purview of “photography services.”

As described in Opinion No. 20090418, if taxable and nontaxable items are commingled on a single invoice, the entirety of the invoice will be subject to tax under the Arkansas definition of Gross Receipts. *See, e.g.,* Ark. Gross Receipts Tax Rule GR-3(H). Charges for the photography services need to be separately stated and taxed on an invoice otherwise the entire amount of the invoice that includes the photography services will be subject to tax.

This opinion is based on my understanding of the facts as set out in your inquiry and as current Arkansas laws and rules govern those facts. Any changes in the facts or the law could result in a different opinion.

Sincerely,



Joel DiPippa, Attorney at Law
Revenue Legal Counsel